

In The United States District Court
For The Middle District of North Carolina

Brian David Hill,
Petitioner,

v.

United States of America,
Respondant,

Criminal/Civil Action no.
1:13-CR-435
1:17-CV-1036



Brief/Memorandum of law on Rule 11 Plea in support of
2255 Motion (Doc. #125) and 2255 Brief (Doc. #128)

Criminal Defendant and §2255 Petitioner Brian David Hill files this Brief/Memorandum of Law attacking Hill's guilty plea under the ~~Rule~~ Rule 11 colloquy, and further in support of Hill's Actual Innocence, and in support of Hill's Fraud Upon The Court claims. Supplement 4 in attachment to this memorandum shows a Declaration which establishes an evidential basis that Hill's guilty plea wasn't just caused by ineffective assistance of counsel but by the fact that Hill never got to review over all of his criminal case discovery material (the "Brady" material, Brady v. Maryland) prior to his change of plea from not-guilty to guilty (Document #20). Hill was in the dark on the very evidence that the Government/Respondant had used against Hill to indict him and that evidence which was going to be used against Hill at the planned Jury Trial.

Hill was misinformed and Hill's family had been misinformed that Hill had no chance of winning and that Hill would have faced 20 years had he not taken the guilty plea. Misinformed by none other than Assistant Federal Public Defender Eric David Placke, Hill's former Counsel. Hill not knowing what was in all of his criminal case discovery material, not reviewing over all discovery evidence material was to be a losing battle at Jury Trial, a Trial by ~~Ab~~ Ambush no thanks to Hill's own defense attorney Mr. Placke. Hill would have won the Jury Trial had Hill's counsel been effective. The evidence and case law as well as legal arguments Hill made/cited in his 2255 Motion, 2255 Brief, and post-2255 Motion filings prove he that had a excellant chance of being found not-guilty by a Jury. Hill's counsel failed him.

According to Supplement 1 case law of United States v. Cortez Fisher (Fourth Circuit U.S. Court of Appeals, 711 F.3d 460, 2013), "a guilty plea is not knowingly and voluntarily made when the defendant has been misinformed, as to a ~~any~~ crucial aspect of his case." Case law of United States v. Brown, 117 F.3d 471 (11th Cir. 1997) had shown that misinformation given to the defendant made his plea involuntary. According to Supplement 2 case law, the order denying the 2255 Motion in that case was reversed. "A plea of guilty is constitutionally valid only to the extent it is "voluntary" and "intelligent." Brady v. United States, 397 US 742, 748, 25 L Ed 2d 747, 90 S Ct 1463 (1970). According to Supplement 3 case

law of *Bousley v. United States*, 523 U.S. 614, 140 L.Ed.2d 828, 118 S.Ct. 1604 (1998), "Convicted person held entitled to hearing on merits of collateral claim contesting validity of his guilty plea..." and that "Petitioner's claim may still be reviewed in this collateral proceeding if he can establish that the constitutional error in his plea colloquy "has probably resulted in the conviction of one who is actually innocent." *Murray v. Carrier*, *supra*, at 496, 91 L.Ed.2d 397, 106 S.Ct. 2639.

Hill's guilty plea isn't valid because it convicts an innocent man. The factual basis of guilt and Hill's guilty plea were a fraud upon the court by defense counsel and the Government. The guilty plea was misinformed and/or uninformed, and unintelligent. Hill's guilty plea agreement was another Fraud upon the Court by the Government. Hill is innocent of his charge and conviction.

Respectfully filed with the Court, this the 8th day of March, 2019.

Respectfully submitted,

Brian D. Hill
signed

Brian David Hill
#29947-057

Federal Correctional Institution¹

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Stanley's blog: JusticeForUSWGO.wordpress.com

U.S.W.G.O.

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Certificate of Service

Brian David Hill hereby certifies that he deposited the foregoing pleading and (4) four supplements in a certified mailing envelope (tracking no. 7018 1130 0000 8938 9978) which was mailed out at the Mail Room of the FCI¹ Butner institution on March 8, 2019 to the Clerk of the Court. Hill requests that the Clerk serve the Government with a copy by Notice of Electronic Filing using the CM/ECF system.

Thank You.

Respectfully filed,

Brian D. Hill

signed

Brian David Hill
#29947-057

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